American Society for Engineering Education

October 12, 2005

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-3062

SUBJECT: DFARS Case 2004-D010

Dear Ms. Williams:

Thank you for the opportunity to comment on behalf of the Engineering Deans Council of the American Society for Engineering Education (ASEE) in response to the request for comments on the proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) (Case 2004-D010) to create a new contract clause regarding access to export-controlled technology, published in the Federal Register on July 12, 2005. The Engineering Deans Council of the American Society for Engineering Education is the leadership organization of the deans of engineering in the United States. More than 300 of the 352 deans of engineering in the nation belong to the Engineering Deans Council.

The Department of Defense (DOD) is proposing to amend the DFARS to address requirements for preventing unauthorized disclosure of exported-controlled information and technology under DOD contracts. This proposed rule contains a new DFARS Subpart 204.73, Export-Controlled Information and Technology at Contractor, University, and Federal Funded Research and Development Center Facilities, and an associated contract clause.

Export control laws and regulations restrict the transfer of certain types of information and technology. Any access to export-controlled information or technology by a foreign national or a foreign person anywhere in the world, including the United States is considered an export to the home country of the foreign national or foreign person.

For example, under the proposed contract clause the DOD contractor at university, Federally Funded Research and Development Centers, and contractor facilities must maintain an effective export compliance program, including an access control plan that includes unique badging requirements for foreign nationals and foreign persons and segregated work areas for export-controlled information and technology.

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The proposed amendment to DFARS has the potential to have a direct impact on the health of United States research and development in science and engineering and on the competitiveness of the United States science and engineering enterprise in the global economy. This impact needs to be considered when DOD officials assess the impacts of the proposed regulation. Foreign nationals have made and do make many important contributions to the science and engineering research enterprise of our nation. As stated in the May 2005 National Academy of Sciences publication Policy Implications of International Graduate Students and Postdoctoral Scholars in the United States, "the United States must work to attract the best international talent while seeking to improve and invigorate the mentoring, education, and training of its own S&E [science and engineering] students... This dual goal is especially important in light of increasing global competition for the best S&E students and scholars."

Today there are a large number of foreign science and engineering students and graduates of U.S. institutions in the United States. For example, in 2003 students from foreign nations earned 38% of US-awarded doctorates in science and engineering and 58.9% of the engineering doctorates. The percentage of temporary residents among science and engineering postdoctoral scholars has gone up from 37% in 1982 to 59% in 2002. Year 2000 U.S. Census data show that approximately 38% of doctorate-level employers in science and engineering occupations are foreign born; in 1990 24% were foreign-born. Among science and engineering tenure-track and tenured faculty, 19% are foreign-born. In engineering disciplines 36% of positions are held by foreign born faculty. Foreign nationals comprise close to half of the PhD- level staff at the National Institutes of Health (NIH) campus and 58% post doctoral research, and clinical fellows there. These statistics are drawn from the National Academy of Sciences publication cited above and available at: http://www.nap.edu/books/0309096138/html/

Science and engineering research is collaborative and requires sharing information. Establishing separate research facilities for foreign-born scientists and engineers could create a hostile work environment.

We share the views stated in the October 11, 2005, letter to you from the Council on Governmental Relations (COGR), and the October 7, 2005, letter to you from the National Association of State Universities and Land Grant Colleges (NASULGC) with respect to the proposed new DFARS contract clause regarding access to export-controlled technology. Thank you for your consideration.

Sincerely,

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